

Before the Arbitrator

In the Matter of the
Arbitration of a Dispute
Between

Okoboji Community School District

and

Okoboji Education Association

Iowa PERB Case CEO #709
Sector 1
Issued: May 28, 2007

Appearances:

For the District:

Stephen Avery, Attorney
Robert Miller, District Superintendent

For the Association:

Mora Zinn, UniServ Director
Scott Seeger, Association
Gregory Stevens, Association

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Introduction and Statement of Jurisdiction:

This matter was processed pursuant to Iowa Code, Chapter 20 (2005), to an arbitration hearing held at Milford, Iowa on May 17, 2007 before the Arbitrator Sharon A. Gallagher, who was jointly selected by the captioned parties from a list furnished to the parties by the Iowa PERB. The hearing was electronically recorded by the Arbitrator. The parties stipulated that there was no negotiability dispute but the Association indicated it had filed a prohibited practice and arbitrability dispute with the Iowa PERB (neither of which had been served on the District as of the date of the instant hearing). No subpoenas were requested.

Both parties submitted extensive documentary evidence as well as testimonial evidence. The District proceeded with its case first. Witnesses included Robert Miller, for the District, and Scott Seeger and Gregory Stevens for the Association. The parties orally argued their positions at the beginning and at the close of the hearing and they chose not to submit written briefs.

The Award set forth below is based upon the Arbitrator's weighing of all facts and arguments submitted and the application of the relevant statutory provisions

Stipulations:

The parties stipulated that the sole item at impasse between them was the transfer procedures, and that the power of the public employer to levy taxes and appropriate funds

(Iowa Code, Section 20.22 (9) sub 4 (2005)) was not a factor relevant to this dispute. Although the parties have no stipulated or agreed upon independent impasse procedure, prior to the hearing, the parties stipulated and agreed to waive the Chapter 20, *Code of Iowa* (2005) (revised) requirements that collective bargaining be completed by May 31, 2007 for the 2007-08 Master Contract between them, making Section 20.22 applicable to this dispute.

Arbitration Criteria:

Chapter 20 of the *Code of Iowa* (2005) (revised) contains the specific criteria that are to be used by this Arbitrator to assess the reasonableness of the parties' disputed final offer items. Those criteria at Section 20.22 (9) read as follows:

9. The panel of arbitrators shall consider, in addition to any other relevant factors, the following factors:

a. Past collective bargaining contracts between the parties including the bargaining that led up to such contracts.

b. Comparison of wages, hours and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved.

c. The interests and welfare of the public, the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of services.

d. The power of the public employer to levy taxes and appropriate funds for the conduct of its operations.

The statute further provides that the Arbitrator must select, without alteration, the most reasonable of the positions on each item at impasse and consider the above-quoted criteria in reaching her conclusion as to which position is the most reasonable.

Final Offers:

The parties stipulated that their final offers for the 2007-08 Master Contract are identical on all items except the transfer procedure item which is before the Arbitrator herein. The Association has offered to maintain the *status quo* thereon which appears in the expired 2006-07 agreement, while the District has offered to delete certain language covering transfer procedures. The 2006-07 provision offered by the Association appears below, with the underlined portions reflecting the language the District has proposed to delete in its final offer herein:

ARTICLE VII

TRANSFER PROCEDURES

A. Definitions:

1. The unwilling movement of an employee to a different grade level, subject area, or building, is an involuntary transfer.
2. The willing movement of an employee to a different grade level, subject area, or building is a voluntary transfer.

B. Employees shall be notified of vacancies occurring within the bargaining unit when they occur as follows:

1. Vacancies occurring after August 31 and before May 16: posting on the school bulletin board, and
2. Vacancies occurring after May 25 and before September 1: posting on the school bulletin board and written notice to the Association president and/or designee

C. Filing Request:

Employees who desire a change in grade and/or subject assignment or who desire to transfer to another building may file a written statement of such desire with the Superintendent. Such statement shall include the grade and/or subject to which the employee desires to be assigned and the building or buildings to which the employee desires to be transferred, in order of preference. Such request for transfer and reassignment for the following school year shall be submitted not later than May 1 (December 1 for the second semester)

D. Qualified Volunteers:

No position shall be filled by means of involuntary transfer or reassignment if there is a qualified volunteer available to fill said position.

E. Notice:

Notice of an involuntary transfer or reassignment shall be given as soon as practical and in no case later than June 1, except in case of emergency.

F. Procedure:

1. Voluntary Transfer:

In the determination of requests for voluntary reassignment and/or transfer, the wishes of the individual employee shall be honored to the extent that the transfer does not conflict with the institutional requirements of the school system. No such request shall be denied arbitrarily, capriciously, or without basis in fact. If more than one employee with certification has applied for the same position, the determination as to which employee shall receive it shall be made on the basis of seniority.

2 Involuntary Transfer:

If the involuntary transfer or reassignment is necessary, employees will be transferred in reverse order of seniority. Employees with the least seniority in the subject area or grade level in which the involuntary transfer is made will be transferred first.

G. Meeting and Appeal:

An involuntary transfer or reassignment shall be made only after a meeting between the employee involved, the Association representative and the Superintendent, at which time the employee shall be given written reason(s) therefore [sic].

In the event that an employee objects to the transfer or reassignment on the basis of the reasons provided at this meeting, the employee may appeal the involuntary transfer or reassignment at the appropriate level of the Grievance Procedure, ARTICLE II

H Priority in Reassignment:

A list of open positions in the school district shall be made available to all employees being involuntarily transferred or reassigned. Such employees may request the positions, in order of preference, to which they desire to be transferred.

The District's final offer also included the following explanation:

The effect of the deletions urged is to allow the Employer to have the final decision on what grade level and subject is taught by the Employee rather than the Employee making the final decision.

Background:

Okoboji Community School District is located in northwestern Iowa in the heart of an area known as the Iowa Great Lakes Region. The population of the area served by the District is 3,700. The District has 73.4 FTE unit professional employees; it has experienced declining enrollment since 2005 (ER Exhibit, Pink Tab), from 1000 students to a current level of 908 students, although its Open Enrollment deficit is currently dropping.

In September, 1983, the Arnolds Park Education Association (APEA) was certified to represent professionally certified employees of Arnolds Park Community School District (APCSD). The first contract between APEA and APCSD covered 1984-85 and was reached prior to April 24, 1984. That agreement did not contain any transfer procedure language. The first contract reached between Milford Community School District (MCSD) and the Milford Education Association (MEA) covered 1987-89. That first contract contained the identical transfer provision found in the 2006-07 agreement between these parties. In 1989, the APCSD and the MCSD merged to make Okoboji Community School District and the MCSD contract remained in effect for the new entity, including Article VII.

It is undisputed that when the District initially advertises teaching openings and when it contracts with an individual teacher for the first time, in each advertisement and in each initial contract, the District lists the specific grade level, assignment, or subject area of the teacher (ER Exhibits, Pink and Green Tabs).

Bargaining History:

The District offered evidence showing that it had (unsuccessfully) proposed to change the Article VII Transfer Procedures in the 2005-06 Agreement as follows:

Article VII: Transfer Procedures

Paragraph D: Qualified Volunteers: Delete this entire paragraph.

Paragraph F: Procedures: Replace paragraph F with the following language – “Any employee may apply for a voluntary transfer to another grade level or teaching assignment and such application shall be in writing to the superintendent. Denial of a transfer to a vacancy existing at the time of such request shall be in writing. In the event that the superintendent determines that involuntary transfers are necessary, the superintendent shall give written notice to the affected employees as soon as possible.”

Paragraph G: Meeting and Appeal: Delete the second subparagraph that starts, “In the event that an employee objects.”

Article VII: Procedures for Staff Reduction

Paragraph C: Replace paragraph C with the following language – “If staff reduction has not been accomplished, the teacher(s) will be reduced or terminated by the administration and the Board.”

However, the District submitted no evidence of bargaining history regarding the above-quoted proposal. In its 2007-08 contract proposals, the District again proposed to change the Article VII, Transfer and Reduction Procedures, as follows:

4. Article VII: Transfer Procedures

Add new Paragraph I: “The final decision on voluntary transfers and involuntary transfers shall rest with the administration. Voluntary transfers shall not be allowed and involuntary transfers shall not happen if in the opinion of the administration the transfer is not in the best educational interest of the district. Transfer decisions are handled on a case-by-case basis and each must be reviewed as to how it impacts the school district.”

5. Article VIII: Procedures for Staff Reduction

Paragraph C: Replace paragraph C with the following language – “If staff reduction still has not been accomplished, the teacher(s) will be reduced or terminated as determined by the administration and the Board.”

The Association's response to the District's Transfer proposals came on March 20 and May 3. The Association's March 20th e-mail read as follows:

Mora Zinn has filed for arbitration on behalf of the OEA.
We are certainly willing to meet again to see if we can reach an agreement.
However, we have decided that we will not bargain on transfer or staff reduction language.
If the administration is insistent on changing that language, we can still talk money, but an arbitrator will have to rule against us on those two language issues if changes are to be made

The Association's May 3rd e-mail read as follows:

The Negotiation Team met last night and after considering different transfer language possibilities we have decided that it is not in our best interest to change the transfer language at this time
We would still be interested in settling the contract provided language changes are not part of the settlement.
If there is any interest from the board in a money only settlement please let me know.

After May 3, 2007, the District changed its Final Offer to reflect that now before this Arbitrator.

Robert Miller has been Superintendent of OCSD for the past three years. Miller researched voluntary transfers granted by the District both during his tenure as Superintendent and prior to his employment there, which resulted in that which is supplied here as Attachment A, on the following page.

Comparables:

District:

The District submitted the contracts from various comparable groups including the Siouxland Conference Schools, Geographic Schools (within a 65-mile radius of Okoboji) and the "Ten Up and Ten Down" group.¹

A. Siouxland Conference:

The Siouxland Conference includes the following districts with the number of students listed to the right of each listing:

¹ Only one of the Ten Up/Ten Down Comparables (Sioux Center) is within 65 miles of the District (Sioux Center); the rest are scattered all over the State of Iowa

<u>SCHOOL</u>	<u>SIZE</u>
Boyden – Hull	608
Central Lyon	721 2
George – Little Rock	501 6
Hartley – Melvin – Sanborn	701 2
MOC – Floyd Valley	1322 5
Okoboji	908 5
Rock Valley	536 3
Sibley – Ocheyedan	858 3
Sioux Center	965 3
West Lyon	737 5

- 1) Boyden – Hull: Voluntary transfers: changes in grade, subject assignment or building, allowed for “vacant position” or if “all employees involved agree a transfer would be desirable.”

Involuntary transfers: on the “basis of getting the best staff member in each position in the district”; seniority “shall be one of the main factors considered.....”

- 2) Central Lyons: Voluntary transfers: to “another position in the bargaining unit,” employees possessing “necessary qualifications” may apply; transfers granted “based upon the needs of the School District as determined by the administration.”

Involuntary transfers: to a different assignment, grade level or subject area; employee transferred has priority to return to former position if it becomes available within a two year period.

- 3) George – Little Rock: Voluntary transfers: to “another position in the bargaining unit”; “necessary qualifications” required; requests granted “based upon the needs of the School District as determined by the administration.”

Involuntary transfers “based upon the need of the School District as determined by the administration.”

- 4) Hartley – Melvin – Sanborn: Voluntary transfers: assignment to “a different job classification, grade level or subject area”; applications “shall be considered by the administration on the basis of certification, qualifications, previous experience in the district and impact of the transfer on the programs of the system.”

Involuntary transfers: decisions for these “will be based on the formation of the most effective team(s); then prior experience in the new grade level or curricular area.”

All transfer decisions “shall be at the sole and exclusive discretion of the Superintendent.

- 5) MOC – Floyd Valley: Voluntary transfers “to another building” only; written explanation of reasons for denial necessary.

Involuntary transfers: Superintendent determines such is necessary; transfer to be preceded by a conference between the Superintendent and the employee.

- 6) Sibley – Ocheydan: Voluntary transfers: any employee may apply for a transfer or reclassification in writing with denials being in writing also.

Involuntary transfers: Superintendent determines such transfer reclassifications as are necessary; reasons must be given “except for procedures”; *neither* is subject to grievance arbitration beyond Step 3.

- 7) Sioux Center: No transfer information.

- 8) West Lyon: Voluntary transfers: certification necessary to apply; written reasons to be given if a transfer is denied; opportunity to return to former position if it becomes available within a two-year period unless the transfer is a result of an evaluation.

Involuntary transfers: written reasons must be given; employee has the right to return to former position (as with voluntary transfers)

B. Geographic Comparables:²

The District’s Geographic Comparables are all within a 65-mile radius of Okoboji and include the following districts with the number of students listed to the right of each listing:

<u>SCHOOL</u>	<u>SIZE</u>
Cherokee	1052.9
Clay Central – Everly	467.1
Emmetsburg	682.2
Estherville – Lincoln Central	1381.4
Harris – Lake Park	301.1
Sheldon	1054.8
Sioux Central	433
Spencer	1907.1
Spirit Lake	1223
Storm Lake	1945.9
Terril – Graettinger	442.2 ³

- 9) Cherokee: Voluntary transfers: changes in “subject matter, area of teaching”; employees may seek changes in “grade, subject matter, area, assignment or

² It is significant that five of these districts are significantly smaller (from approximately 370 to 600 fewer students), and the other five districts are larger than Okoboji (by approximately 140 to 1035 students).

³ No information was proffered by the District on this district.

building”; no involuntary transfers “if it is determined by the administration that there is an acceptable...qualified volunteer available ”

Transfer decision standards to be used by the administration: job performance, licensure/qualifications and seniority. Informed in writing.

- 10) Clay Central – Everly: Voluntary transfers: changes in grade level or teaching assignment.

Involuntary transfers: the superintendent “determines that involuntary transfers are necessary”; written notice must be given.

- 11) Emmetsburg: Voluntary transfers: “to another building” only; details in writing.

Involuntary transfers: the superintendent “determines that involuntary transfers are necessary”; written notice must be given.

- 12) Estherville – Lincoln Central: Voluntary and involuntary transfers: changes in grade level, subject area or building; no involuntary transfer if “in the opinion of the Board” there is “an acceptable and qualified volunteer available.” Board “shall consider skill, competence, qualifications and ability” in making transfer decisions and if equal seniority in the District is determinative. There is no intent to use transfers as discipline.

- 13) Harris – Lake Park: Voluntary transfers: “any teacher” may request a transfer; denials are to be in writing; if two or more apply, transfer goes to senior (full-time) teacher.

Involuntary transfers: superintendent determines necessity; written notice is given, along with a meeting detailing reasons; “if qualified volunteers are available, the shall first be considered in the event of necessity for involuntary transfers.” Transfers not subject to grievance beyond 3rd Step.

- 14) Sheldon: Voluntary transfers: transfers allowed “to another building” only “based upon the needs of the school district as determined by administration” or “need of the school as determined by the administration.”

- 15) Sioux Central: If transfers are “necessary,” “attempts will be made to accomplish this through voluntary transfers acceptable to the administration”; denials are explained in writing. “Class or subject matter reassignments” warrant notice and a visit with administrative staff

- 16) Spencer: Voluntary transfers: may be made to “another building, grade level or subject area”; if there are “equal qualifications, skill, competence, and ability, [the] length [of] full-time service is determinative.”

Involuntary transfers: Superintendent determines necessity, meeting and reasons. If qualified volunteers are available, they shall first be considered, not subject to grievance procedure beyond 3rd Step (and procedure not substance).

- 17) Spirit Lake: Voluntary transfers: grade level or teaching assignment, denials in writing.

Involuntary transfers: superintendent determines necessity; written notice.

- 18) Storm Lake: Voluntary transfers: grade level, subject area or building; conference with superintendent and written explanation to all.

Involuntary transfers: "will not be used to fill a vacancy" when superintendent determines it can be filled by voluntary transfer; notice, conference, and written explanation.

C Ten Up/Ten Down Comparables

The District's Ten Up/Ten Down Comparables include the ten districts larger than Okoboji and the ten districts smaller than Okoboji, apparently based solely on number of students in each district and without regard to geographic area or athletic conference, although Sioux Central (a Siouxland Conference school) is among these districts. The Ten Up/Ten Down Comparable districts are as follows, with the number of students⁴ listed to the right of each listing:

<u>SCHOOL</u>	<u>SIZE</u>
ROLAND-STORY	1035.4
MONTICELLO	1027.4
CLARINDA	1009.6
OSAGE	1005.6
NORTH CEDAR	995.6
CENTRAL LEE	992.8
PCM	991.5
WEST CENTRAL VALLEY	986.8
SIOUX CENTER	957.1
CAMANCHE	956.1
OKOBOJI	948.6
CLARION-GOLDFIELD	938.6
MFL-MAR MAC	934.3
MISSOURI VALLEY	930.6
MEDIAPOLIS	907.4
EAGLE GROVE	906.5
INTERSTATE 35	904.1
WILTON	899
LOUISA-MUSCATINE	890.2
COLFAX-MINGO	866.7

⁴ The District gave no explanation as to why Okoboji was listed as having just over 948 students as opposed to the 908 students listed under the Siouxland Comparables group.

- 19) Roland – Story: Voluntary transfers: between buildings or positions (grade/subject), filled based upon the needs of the district as determined by the employer.

Standard: “seniority, relative skill, ability, competence and qualification.”

Involuntary transfers: only when the employer determines it necessary; notice and meeting required; “voluntary requests will be considered first.”

- 20) Monticello: Voluntary transfers: “any” available vacancy; all applications “carefully considered.”

Standard: “Academic preparation, certifications, candidate interview and seniority will be considered by the administration....”

Involuntary transfers: notification, a requested conference and requested written procedures which may include “experience, seniority, education and performance ...and what may be in the best interest of the students ”

- 21) Clarinda: Voluntary transfers: “to another position”; employee must possess the necessary qualifications; applications given “careful consideration and granting ...will be determined by the Board”; Superintendent meets and explains denial.

- 22) Osage: Voluntary transfers: “class assignment, grade level, curricular subject area or building.”

Standard: professional judgment of the administration and reflect the commitment of the district to providing the best-quality education.

Involuntary transfers: If the superintendent decides an emergency exists or to prevent undue disruption of the instructional program and there is a qualified volunteer (in the superintendent’s opinion) the vacancy shall be filled by the qualified volunteer; if there are no qualified volunteers, the superintendent applies above standard for involuntary transfer.

- 23) North Cedar: Voluntary transfers: different grade level, subject area, or building, if only one volunteer that employee gets the transfer if certified; if two or more volunteers, one must be chosen “as determined by the administration ”

Involuntary transfers: only done in “emergency, to enhance the educational program and/or take full advantage of school facilities.” Administration determines need but may ask for volunteers from those teaching in the affected grade level or subject area (right of return). If no one volunteers, the employee with the least district seniority at that level/area will be involuntarily transferred and that employee has bumping rights based on seniority.

- 24) Central Lee: Voluntary transfers: to another building, grade level, or subject area according to the needs of the district, certifications, educational preparation, experience and relative skill, ability and competence; if qualifications are equal, district seniority is determinative; then other factors applied.

Involuntary transfers: if more than one teacher is considered then the least senior will be considered first

- 25) PCM: Voluntary transfers: different grade level or subject area If more than one employee applies, then superintendent will consider certification, academic preparation and other qualifications for the position; if candidates are equally qualified, the selection shall be made by seniority.

Involuntary transfers: will not be done and new hire will not be hired if there is a certified volunteer "unless the instructional requirements of the...system cannot be met...."

- 26) West Central: Voluntary transfers: change of building, grade level or curriculum area. Best qualified is the sole judgment of the employer.

Involuntary transfers: Employer maintains the right to assign according to the needs of the district.

- 27) Camanche: Voluntary transfers: "to a different building," and involuntary transfers: "when two or more teachers desire the same position and skill, ability, qualifications and subject matter competence are equal in the sole and exclusive judgment of the Administration, seniority will prevail...."

- 28) Clarion – Goldfield: Seniority provision only: "when two or more teachers desire the same curricular or extra-curricular position and skill, ability, qualifications and subject matter competence are equal in the judgment of the Administration as established by evaluation, seniority will prevail"

- 29) MFL Mar Mac: Voluntary transfers: different building, grade level, subject area; if request not honored, written reasons given.

Involuntary transfers: not to be made for arbitrary or capricious reasons; voluntary transfer shall first be attempted; conference and written reasons.

- 30) Missouri Valley: "transfers" not defined; made "by the superintendent when in his or her judgment the transfer is for the welfare of the students, the employee, or the school."

"All voluntary transfers will be exhausted before involuntary transfers are implemented."

31) Mediapolis: Voluntary and involuntary transfers between buildings, grade levels, and subject areas. "Employer shall consider the needs of the district, certification, educational preparation and experience and the relative skill, ability, competence and qualifications; applicants adjudged by the Employer to have greater skill... will be given preferential consideration; those adjudged to have equal skill... District seniority will prevail. Current employees will be given preference for vacancies over new hires."

32) Eagle Grove: change in grade, subject assignment or building "All transfers shall be at the discretion of the Board, who shall have the final determination...in the best interests of the district."

33) Interstate 35: building, grade level, job classification, subject area within certification.

Voluntary transfers: review of application, certification, academic preparation, credentials, performance evaluations "Seniority shall be considered if all other factors are deemed comparable."

Involuntary transfers: notice and reasons given but no cut in pay (same lane).

34) Wilton: grade level, building or subject area.

Voluntary transfers: "Decisions on transfer requests shall be based on the instructional and educational requirements of the District and applicants' certifications, academic preparation, qualifications and ability to perform the work required, and their seniority."

Involuntary transfers: reasons given, employee "may appeal superintendent's decision to the school board whose decision is final," which may be grieved, but the Arbitrator is "limited to deciding only whether the District was arbitrary and capricious "

35) Louisa – Muscatine: building, grade assignments or subject assignments.

Voluntary transfers: "based on qualifications and certifications, if two employees are equal in qualifications and certification, seniority will determine transfer."

Involuntary transfers: "the Administration will take into consideration, so far as practical, training, qualifications, certification, experience, specific achievements and service to the District," conference.

36) Colfax – Mingo: transfers between grade, subject or building

Voluntary transfers: notice of vacancies given; employees may file requests.

Involuntary transfers: notice and meeting held, with reasons given.

37) West Marshall: transfers between buildings only.

Voluntary transfers: written applications "...for the superintendent's consideration."

Involuntary transfers: Board "retains the right to initiate among buildings and/or positions, voluntary shall be considered before involuntary, grievable."

Association:

The Association limited its comparability group to 12 districts: seven from the Siouxland Conference and five within a 20-mile radius of Okoboji. The Association noted that Sioux Center has no transfer provision and Rock Valley only negotiates wages, not a complete contract. Both are Siouxland Conference districts.

<u>DISTRICT</u>	<u>ENROLLMENT</u>
1. Spencer	1,918.6
2. Estherville-Lincoln Central	1,365.3
3. MOC-Floyd Valley*	1,322.5
4. Spirit Lake	1,253.1
5. Sioux Center*	965.3⁵
6. Okoboji	908.5
7. Sibley-Ocheyedan*	858.3
8. West Lyon*	737.5
9. Central Lyon*	721.2
10. Hartley-Melvin-Sanborn*	701.2
11. Boyden-Hull*	608.0
12. Rock Valley*	536.3
13. George-Little Rock*	501.6
14. Clay Central/Everyly	437.1
15. Harris-Lake Park	290.2

*Denotes Siouxland Conference Schools

Positions of the Parties:

District:

The District argued that bargaining history, comparability, and the interests and welfare of the public are involved in this case. Regarding the comparables, the District selected other districts that, it asserted, overwhelmingly support the reasonableness of its proposed Transfer provision and that the current Transfer provision in the expired agreement is unique, unreasonable, and without any comparable support because it allows District teachers to apply for vacancies in different grade levels, subject areas or

⁵ Sioux Center and Rock Valley have been crossed out for the above-stated reasons

buildings and to receive them so long as they are senior and are certified in the grade/area of the opening.

Regarding bargaining history, the District pointed out that in its opening proposals for the 2005-06 contract, it had proposed to change the Transfer provision by offering broader language than it offered herein, but the Association would not agree to it;⁶ in the 2007-08 negotiations, the District proposed a more restrictive change in the Transfer provision which the Union resisted, indicating that the Association would not bargain thereon, that it was not in its best interest to change the transfer provision, and that an arbitrator would have to order such a change. The District also noted that the Association never proposed at any time to change the substantive portions of the Transfer provision.

The District's sole witness, Superintendent Miller, testified regarding voluntary transfers which have occurred during his three years at the District (from 2005-06 through 2007-08), as well as to his review and compilation of District documents regarding voluntary transfers which occurred between 1994-95 and 2003-04. Regarding the former, Miller stated that three voluntary transfers were requested in 2005-06, two in 2006-07 and two more in 2007-08; that the District has denied the two requested in 2007-08 pending the outcome of this case (one of which would involve a special education teacher transferring into a regular 4th grade classroom). Of the five remaining transfers all involved movement out of a shortage area to a non-shortage area and that for the last three special education openings there were five or fewer applicants in those applicant pools. Miller admitted, however, that regarding the transfers during his tenure, he never ascertained whether the teachers involved had requested transfers due to burn out.

Regarding the transfers which occurred prior to his tenure, Miller stated he merely searched District files for evidence of transfers and he did not know any of the specifics thereof; (i.e., any arrangements for the teacher to return to his or her former assignment or why these transfers were sought); and that 10 of 18 transfers which occurred between 1994-95 and 2003-04 were out of shortage areas. However, Miller admitted that the District has not always hired individuals who met the advertised requirements for the position and that the District has been willing to consider those with temporary certifications or those without proper endorsements to fill openings; and that the Reading Specialists now utilized by the District are not members of the teachers' bargaining unit.

Miller stated that because he is CEO of the District and responsible for the educational product, he feels he should have the final decision regarding all transfers and that by its Final Offer the District means to have him make all final transfer decisions in the interest and welfare of the public and the students. Miller stated that the District places specific advertisements for openings, that its initial teacher contracts are for particular openings and that the District wants to keep teachers employed in the grades, areas, or assignments into which they were hired; that the District is in a very competitive environment. Although Okoboji's open enrollment deficit has decreased of late, it had experienced a decline in enrollment in the past. Miller asserted that changing the transfer language would help him to maintain quality staff in all areas and grades.

⁶ The District offered no bargaining history—such as e-mails or letters—concerning its 2005-06 transfer proposal and it offered no evidence concerning any District transfer proposals made for the 2006-07 contract or prior to 2005. Notably, the parties voluntarily settled the 2006-07 contract.

The District urged the Arbitrator to select its offer as most reasonable, based upon the comparables, the Association's unwillingness to discuss the subject, and the interest and welfare of the public in having the District make such decisions.

Association:

The Association noted that this is the first time in their 20-year relationship that the parties have failed to settle their contract; that the transfer language was placed into the initial agreement and has appeared unchanged in every contract since then; that the District did not offer additional money or incentives to accept its language change herein and it did not offer the transfer proposal in its Final Offer until just before going to arbitration. The Association argued that such a drastic change should have been bargained in the give and take of negotiations by the parties, not imposed by an Arbitrator, citing a summary of 27 awards by various arbitrators issued from 1979 through 2004 in which each arbitrator declined to change existing contract language either due to conflicting past practice, lack of evidence for a need for the offered change, lack of evidence of financial need for the change, or where *status quo* language had been voluntarily agreed to by the parties, or because major changes in a provision should be negotiated by the parties.⁷

The Association proffered evidence to show that prior transfers had benefited the District and that in no case had a position vacated by a voluntary transfer gone unfilled by the District (the District decided not to fill the Roos vacancy and Reading Specialist vacancies with unit employees) and that in any event, District student test scores have been consistently high—in the 90th percentile—indicating the continuous success for the District's educational program while allowing senior certified teachers to transfer as they wish. The Association also pointed out that the reasons for the need for a change in the transfer provision stated by Superintendent Miller and argued by the District herein were never articulated to the Association in bargaining; that in the past, the Association has filed grievances concerning the application of the transfer provision to staff yet all cases (filed prior to 2007) have been settled without arbitration.

The Association expressed concern that, if adopted, the District's language would cause problems as it is internally inconsistent with unchanged portions of the Transfer language. In this regard, the Association noted that the District removed references to grade level and subject area in Section A, Definitions, which meant that voluntary and involuntary transfers would only be available if another position was vacant in a different building, but left intact references to grade level and subject area in Sections C and F2. Indeed, the Association asserted, it was unsure how the District's offer would operate in the real world.

In the circumstances here, the Association urged the Arbitrator to reject the District's offer based upon the District's failure to prove a need for the change, the fact that such a drastic change in a long-standing contract should be made at negotiation, and the lack of a *quid pro quo* offered therefor.

⁷ Union Exh. 4, p. 68-71. Neither the formal citations of these awards nor copies thereof were placed in this record.

Discussion:

Initially, this Arbitrator notes that neither party placed any evidence into this record or made any arguments regarding the District's "ability to finance economic adjustments and the effect of such adjustments on the normal standard of services" (Iowa Code, 20.229 (c)). Nor have the parties argued or submitted any evidence under Iowa Code, 20.229 (d). Indeed, the parties stipulated that these portions of the Iowa Code are not applicable to this case. As such, these portions of the law are not relevant to this dispute. This leaves Sections 20.229(a), (b), and a portion of (c) relevant and regarding which the evidence herein must be weighed and analyzed.

Bargaining History and Past Contracts:

This factor, from Section 20.229 (a) of the Code, as applied to this case, favors the Association's offer in the view of this Arbitrator. In this regard, this Arbitrator notes that the Article VII Transfer provision contained in the expired 2006-07 agreement has appeared in every labor agreement between these parties since 1987. Absolutely no evidence was proffered regarding the give and take in negotiations which resulted in the inclusion of Article VII into that initial agreement. No changes have ever been made to the provision and the parties have voluntarily settled all contracts entered in the past 20 years (before the instant one). Also, all grievances over transfers filed before 2007 have been settled by the parties amicably without arbitration.

In addition, the evidence herein showed that the District has only proposed to change the Article VII Transfer language twice—once in negotiations for the 2005-06 agreement and once in the recent negotiations over the 2007-08 agreement. In the view of this Arbitrator, this evidence is insufficient to show that the District has repeatedly tried and failed to change this provision, and that the Association has refused to negotiate regarding the item over a long period of time, frustrating and defeating the normal bargaining process. Also, the evidence regarding negotiations concerning the Transfer provision showed little movement on the District's part in 2007 until it crafted its Final Offer and no suggestion at any time that the District might be willing to explore or offer a *quid pro quo* for the changes the District sought. Significantly, the evidence showed that the District failed to articulate specific explanations or reasons for the changes it has proposed here during negotiations for the 2007-08 contract.

Comparables:

The most contested factor in this case was comparability. As the parties have never before gone to interest arbitration, the comparables have never been assessed or set. Here the District offered many comparables, including the Siouxland Conference, Geographic Comparables (within a 65-mile radius) and a Statewide Ten Up/Ten Down Comparables, while the Association offered approximately 14 comparables all within a 20-mile radius of Okoboji. This Arbitrator has analyzed all comparables offered by the District, and she notes that the Association's comparables are all within at least one of the

three groups of comparables used by the District. For the purposes of this case, which concerns only one language item, this Arbitrator will use all suggested comparables.

In this case, the District has proposed to limit transfers to changes to a different building when transfers were previously allowed to different grade levels and subject areas as well. An analysis of the comparables shows that an overwhelming majority of them (24 of 37) define transfers as more than a change from building to building. Thus, on this point the District's offer is not supported by its own comparables.

The question arises if a change in grade level or subject area is desired by a teacher or required by the District, how would the District handle this were its Final Offer selected? The answer must be that the Superintendent will have the final say on such voluntary and involuntary transfers and, as Section D, Qualified Volunteers is deleted in the District's Offer, volunteers will not need to be considered in any way before the Superintendent reassigns or involuntarily transfers a teacher to a different grade or subject area or he denies such a voluntary transfer request. This is a major change from the past, when a senior teacher certified in the grade level or subject area could request a transfer to an opening in that grade level, subject area or in another building and get it. This Arbitrator tends to agree with the Association that such a major change should be negotiated by the parties, not imposed by an Arbitrator.

However, the District is correct that the kind of provision found at Okoboji is relatively unusual among the comparables. This Arbitrator could find only *three* districts that had a somewhat similar provision; Boyden-Hull, Estherville-Lincoln, and Cherokee. However, many districts require (this Arbitrator finds 15 of these) the application/analysis of some sort of standard or factors, such as qualifications, experience, certification, etc., to determine whether a transfer is appropriate or reasonable. In contrast, the District's Offer essentially leaves the final decision to the Superintendent without stating any standard or factors which he must apply. In addition, some other districts allow those involuntarily transferred to return to their former positions if available at a later date (two of these), while other districts (nine of them) require the use of volunteers before any involuntary transfers may occur. Here, the District made no proposals in these areas.

The Association has argued that the District's Offer is internally inconsistent and potentially confusing. This Arbitrator agrees in part. Given the explanation it attached to its Final Offer, it is difficult to determine what if any meaning old Sections F1 and 2 (still in the agreement even under the District's offer) will have. It appears to this Arbitrator that at most these provisions will have no effect under the District's offer except when an employee is changing buildings.

In all of the circumstances here, this Arbitrator finds that the parties' comparables do not overwhelmingly support the District's case as the District argued herein. Rather, the comparables show that the District's proposal is one of a few that narrowly restrict transfers to building changes only (five of these); that the District's offer lacks any true standard or factors by which the Superintendent must judge the appropriateness of transfers and it is one of a few districts (seven of these) which allows the Superintendent *carte blanche* in deciding to transfer employees involuntarily from grade level to grade level and subject area to subject area. In sum, the comparables do not support the District's Offer. Indeed, a majority of the comparables allow broader transfer rights and/or require specific standards to be applied in judging the appropriateness of each

transfer or they allow volunteers (eight of these) to be considered first or they allow transferred employees to return to their former positions (two of these).

Interest and Welfare of the Public:

The District has argued generally that its CEO, Superintendent Miller, should have the last word on transfers because teachers have transferred out of shortage areas, where it is harder to find replacements, into non-shortage areas, and that the District would prefer to retain teachers in the grade or subject area of their hire because it advertises and contracts with teachers for specific openings. However, no evidence was proffered to show that the District suffered any adverse effects as a result of any prior voluntary transfers: specifically, not shortage openings remained unfilled due to teachers' voluntary transfers and no evidence was submitted to show multiple transfers for four teachers otherwise harmed the District. Although the District argued the Administration was and would be sensitive to employee needs or problems if its Offer were selected, Superintendent Miller admitted he never inquired so he had no idea why teachers requested voluntary transfers during his tenure.

In regard to the District's wish to retain teachers in the positions into which they were hired, the Association presented evidence herein to show that the District has not, at times, hired or placed employees in positions who actually possess the necessary or advertised endorsements or certifications. Furthermore, the District's desire to leave teachers in the positions they hired into ignores the undisputable fact that teachers, over a long career, can burn out or become bored or in need of new stimuli in order to perform at their best levels.

It strikes this Arbitrator that the voluntary transfer provision of the parties' past contracts is an important fringe benefit which may well have attracted teachers to the District or allowed the District to retain teachers who were burned out in their regular assignments or who needed the challenge of a new assignment and who otherwise might have sought employment elsewhere. One important example is that of teacher Justin Bouse and the TAG assignment. There, Bouse clearly tried to assist the District to fill a shortage area although he made an agreement preserving his right to return to his former assignment (a concept not covered by Article VII). Thus, the record evidence also failed to show that teachers have been unresponsive or insensitive to the students' and District's needs in the wake of teachers' voluntary transfers.

Furthermore, this Arbitrator does not find the number of transfers (twenty-five over fourteen years) to be particularly excessive. That is less than an average of two per year and even in the worst year, 2001-02, when there were five transfers, only three were out of shortage areas. Based upon this evidence, this Arbitrator finds that the District failed to prove a need for the changes it proposed in Article VII.

The Association argued herein that student test scores showed transfers have had no adverse impact on the District's educational program. As the District offered no evidence to contradict the Association on this point, this Arbitrator has accepted it as fact for the purposes of this Award.

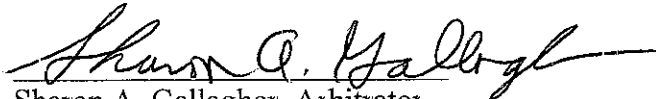
In all of the circumstances here and given the fact that the evidence failed to show that the District or its students have been harmed by the operation of Article VII or that it otherwise had a concrete need for the proposed changes, this Arbitrator concludes that the

Interests and Welfare of the Public factor does not support the District's Final Offer. Rather, given the record evidence, this factor narrowly favors the Association's Final Offer herein (the *status quo*). Based upon the above analysis, this Arbitrator issues the following

AWARD

After having weighed, analyzed, and assessed all of the record evidence in accord with the relevant statutory criteria, this Arbitrator concludes that the Final Offer of the Association is selected as the most reasonable on the sole item in dispute herein, namely, transfer procedures.

Dated and Signed this 28th of May, 2007 at Oshkosh, Wisconsin


Sharon A. Gallagher, Arbitrator

Transfers

During Bob Miller's term as Superintendent

Name	First Employed	From	To	Beginning
Krista Roos	2003	Title I	1st Grade	2005-06
Jamie Brecher	2002	ECSE	4th Grade	2005-06
Tracie Lux	2004	HS SCI	ECSE	2005-06
Connie Jones	1998	HS Guidance	MS Math	2006-07
Kevin Range	1995	MS Guidance	HS Guidance	2006-07
Jolene Leu	1980	1st Grade	Pre-K	2007-08
Beth DuVall	2003	MS Spec Ed	4th Grade	2007-08

Lost teacher in shortage area, did not replace
 Lost teacher in shortage area
 Lost teacher in shortage area
 Lost teacher in shortage area
 Lost teacher in shortage area
 Pending
 Pending, would lose teacher in shortage area

5 out of 7 transfers out of shortage areas

Prior to Bob Miller's term as Superintendent

Name	From	To	Beginning
Gary Koelling	HS Vocal	MS Vocal	1994-95
Kelly Adams	Kindergarten	2nd Grade	1998-99
Katie Heikens	ECSE	Kindergarten	1998-99
Laura Stevens	7-8 Resource	5th Grade	2000-01
Justin Bouse	4th Grade	TAG	2000-01
Sharon Hanson	Reading 1st Gr	1st Grade	2000-01
Kelly Adams	2nd Grade	4th Grade	2000-01
Beth Stump	4th Grade	6th Grade	2001-02
Justin Bouse	TAG	5th Grade	2001-02
Jeanie Eich	Kindergarten	TAG	2001-02
Shannon Ashman	Reading K	Kindergarten	2001-02
Chene Harris	Resource	3rd Grade	2001-02
Beth McCabe	Elem Resource	2nd Grade	2002-03
Jolene Leu	Kindergarten	1st Grade	2002-03
Jen Long	Elem Resource	Elem SCI	2003-04
Shannon Ashman	Kindergarten	Pre-K	2003-04
Kristen Jostand	Reading 1st Gr	Elem Resource	2003-04
Melissa Nelson	Reading K	Reading 1st Gr	2003-04

Lost teacher in shortage areas
 Lost teacher in shortage areas
 Lost teacher in shortage areas
 One year transfer, no consistency in programming
 Lost teacher in shortage areas

Lost teacher in shortage areas

Lost teacher in shortage areas
 Lost teacher in shortage areas
 Lost teacher in shortage areas

Lost teacher in shortage areas

Lost teacher in shortage areas
 Lost teacher in shortage areas

10 out of 18 transfers out of shortage areas

4 teachers have transferred more than once

15 out of 25 transfers out of shortage areas

CERTIFICATE OF SERVICE

I certify that on the 28th day of May, 20 07, I served the foregoing Award of Arbitrator upon each of the parties to this matter by (_____ personally delivering) (X mailing) a copy to them at their respective addresses as shown below:

I further certify that on the 28th day of May, 20 07, I will submit this Award for filing by (_____ personally delivering) (X mailing) it to the Iowa Public Employment Relations Board, 510 East 12th Street, Suite 1B, Des Moines, IA 50319.

Sharon A. Gallagher
S.A. GALLAGHER, Arbitrator
(Print Name)

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